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THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

MOTION FOR
PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE GREGORY FRIZZELL
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1 pathogens can live for extended periods of time?	1 THE COURT: That was in the new affidavit.
2 A In small counts, yes.	2 MR. RYAN: The State specifically said
3 Q Well, when you say that -- well, let's move	3 early in the hearing, if they didn't put it in
4 on, but they can survive for extended periods of	4 evidence at this hearing, it wasn't evidence. They
5 time in sediments and groundwater? 10:08AM	5 weren't going to rely on something in an affidavit 10:10AM
6 A They can. You know, they can. I'll just	6 that wasn't testified to by their witnesses, and
7 answer that.	7 there's been no testimony about antibiotics in this
8 Q Okay. You, though, disagree with the water	8 hearing.
9 quality standards established by the EPA?	9 MR. ELROD: Your Honor, if I might, I was
10 A It's the best I got, and His Honor pointed it 10:08AM	10 the one who was principally in charge of the 10:11AM
11 out very well. You can't tell human from animal	11 Lawrence deposition. I know that was in his
12 feces. So you've got to have something, and that's	12 affidavit, and I specifically inquired of him in his
13 the best they can do.	13 deposition in Mr. Bullock's presence as to whether
14 Q Do you understand that that issue has been	14 he had any opinions or conducted any study of that
15 presented to the EPA as to a difference between 10:08AM	15 issue in the IRW, and he said no, and we went on to 10:11AM
16 animals and people?	16 other things.
17 A Right.	17 THE COURT: All right. So that is in the
18 Q And the decision of the EPA was to maintain	18 mix in terms of the Lawrence affidavit?
19 these standards; is that correct?	19 MR. BULLOCK: Right.
20 A Because they cannot tell them apart. 10:09AM	20 THE COURT: But it's beyond the scope of 10:11AM
21 Q Okay, and that they also have not resolved	21 direct. I have to do something to contain these.
22 whether animals might have additional risks; is that	22 This proceeding is swelling. I've got to do
23 not also true?	23 something to constrain it. The objection is
24 A And I pointed that out. The answer is, yes,	24 sustained.
25 they do, low dose pathogens. 10:09AM	25 Q You've given attention to the question of 10:12AM
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1 Q There's also the issue, and you've written on	1 Campylobacter and Salmonella associated with
2 this, have you not, as to the use of antibiotics in	2 poultry. Is it not also an issue of whether poultry
3 these confined feeding operations; you've written on	3 can carry certain viruses that people can contract?
4 that risk, haven't you?	4 A I don't know of one that's important.
5 A I have. 10:09AM	5 MR. RYAN: Just a second. Object, Your 10:12AM
6 Q And the fact that the development of resistant	6 Honor. This hearing is not about virus. It's about
7 strains of some of these very organisms may be	7 bacteria, and I object to Mr. Bullock going down
8 related to these confined feeding operations?	8 some virus road.
9 A That's correct.	9 THE COURT: I believe we didn't touch on
10 Q Now, have you looked at that issue in relation 10:09AM	10 virus, Mr. Bullock. Although, I have current 10:12AM
11 to risks of waterborne disease?	11 interest in virus.
12 MR. RYAN: Objection, Your Honor. I'm not	12 MR. BULLOCK: Judge, what this witness has
13 sure what that risk is, but I think he's talking	13 testified to unequivocally and without reservation
14 about antibiotics, and if he is, I object. It's	14 is that there's no risk in swimming in the waters of
15 beyond the scope of direct, outside the scope of 10:10AM	15 the IRW to the extent they are polluted by poultry. 10:12AM
16 this hearing and outside the scope of his affidavit.	16 I think that I should be entitled to at least
17 THE COURT: This is the first time we	17 question whether or not he considered all of the
18 touched on resistant strains as a result of	18 risks which might be there.
19 application of antibiotics, I believe. Is it not	19 THE COURT: Once again, I mean, this
20 outside the scope? 10:10AM	20 proceeding has been framed in terms of E. Coli, 10:13AM
21 MR. BULLOCK: Actually I believe, number	21 Enterococci. We really have not gone into virus. I
22 one, that there was some mention of that in Dr.	22 don't want to have it expand into virus at this
23 Lawrence's affidavit, number one. Now, if we didn't	23 juncture. The objection is sustained.
24 and the court stated that those were to be	24 Q Doctor, you did opine as to wound infections;
25 considered by the court. Second of all -- 10:10AM	25 do you recall that? 10:13AM